

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
March 20, 2008 Session

STATE OF TENNESSEE v. J.R.

**Appeal from the Circuit Court for Cocke County
No. 0419 Ben W. Hooper, II, Judge**

No. E2007-01775-COA-R3-CV - FILED MAY 21, 2008

J.R. was adjudged delinquent by the Trial Court for committing incest in violation of Tenn. Code Ann. § 39-15-302 (2006). The issue on appeal is whether a blood relationship of brother and sister under Tenn. Code Ann. § 39-15-302 no longer exists after the parental rights of the siblings' parents are terminated and one of the siblings later is adopted. The Trial Court held that the siblings retain the status of brother and sister for purposes of the incest statute even if their parents' parental rights are terminated and one of the siblings later is adopted. We agree and affirm the judgment of the Trial Court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Keith E. Haas, Assistant Public Defendant, Newport, Tennessee, for the Appellant, J.R.

Robert E. Cooper, Jr., Attorney General and Reporter, and John H. Bledsoe, Senior Counsel, Nashville, Tennessee, for the Appellee, State of Tennessee.

OPINION

Background

The relevant facts for purposes of this appeal are undisputed. On May 23, 2007, J.R. was adjudged delinquent by the Juvenile Court for Cocke County. The offense giving rise to this adjudication was incest in violation of Tenn. Code Ann. § 39-15-302. J.R. was committed to the custody of the Department of Children's Services for an indefinite term.

The Juvenile Court's judgment was appealed to the Circuit Court. A bench trial was conducted on July 11, 2007. Following the trial, the Circuit Court entered an Order stating, in relevant part, as follows:

Upon testimony of the witnesses for both the State and Defense, the Court adjudicates the defendant, [J.R.], to be a delinquent child based upon the charge of incest. The Court will not disturb the sentence imposed by the Juvenile Court.

The incest charge arises from an incident which occurred in November of 2006. On that date, J.R. engaged in sexual intercourse with G.R. (the "victim"), who pretended to be asleep during the sexual assault. The victim was thirteen years old when the assault took place. Semen was found inside the victim and a DNA test was conducted. The DNA test result showed that the "probability of an unrelated individual having the same DNA profile ... exceeds the current world population." J.R. denied having any sexual contact with the victim and stated that he could not explain how his semen was found inside the victim.

On appeal, J.R. does not challenge the sufficiency of the evidence insofar as the Trial Court found that he had engaged in sexual intercourse with the victim on the evening in question. Rather, J.R. challenges only the finding that the victim was his "sister," thereby making the sexual encounter incestuous. More specifically, J.R. claims that the victim was no longer his sister but rather his second cousin and, therefore, he cannot be found to have committed incest in violation of Tenn. Code Ann. § 39-15-302.

M.R. testified at trial that she and her now deceased husband adopted the victim when she was eight months old. M.R.'s husband was the victim's and J.R.'s great-uncle. M.R. and her husband did not adopt J.R., who has spent much of his life in foster care. M.R. testified that J.R. and the victim have the same biological parents.

J.R. testified that he and the victim had different fathers, but J.R. did not dispute that he and the victim had the same biological mother. Thus, depending on which witness' testimony was accurate, at a minimum, J.R. and the victim are half-siblings. If M.R.'s testimony is accurate, then they are full siblings. For purposes of the incest statute, it makes no difference whether J.R. and the victim are half-siblings or full siblings.

The parental rights of the biological parents of J.R. and the victim were terminated many years ago. It is because of this parental rights termination and the adoption of the victim that J.R. argues that the victim is no longer his sister. According to J.R.'s argument:

[M.R.] is his former great aunt due to the termination of his own parents' parental rights when he was thirteen (13) years of age.... Once [the victim] was adopted by [M.R. and her husband, the victim] became the legal daughter of [M.R. and her husband.] This terminated the parental and familial rights of [the victim's] former family, including any siblings.... Therefore, [J.R. became the victim's] second cousin after the adoption.

J.R. argued at trial that because his sister became his second cousin once she was adopted by M.R., he cannot be adjudged delinquent for committing incest. The Trial Court obviously disagreed with this argument when it adjudged him delinquent for violating Tenn. Code Ann. § 39-15-302. J.R. appeals that determination.

Discussion

The issue raised by J.R. involves statutory interpretation and presents a question of law. With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

The statute which J.R. was found to have violated is Tenn. Code Ann. § 39-15-302 (2006) which provides as follows:

39-15-302. Incest. – (a) A person commits incest who engages in sexual penetration as defined in § 39-13-501, with a person, knowing the person to be, without regard to legitimacy:

(1) The person's natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, adoptive child; or

(2) The person's brother or sister of the whole or half-blood or by adoption.

(b) Incest is a Class C felony.

This Court discussed our primary goal in matters involving statutory construction in *State ex rel. Irwin v. Mabalot*, No. M2004-00614-COA-R3-CV, 2005 WL 3416293 (Tenn. Ct. App. Dec. 13, 2005), *no appl. perm. appeal filed*. We stated:

The primary rule of statutory construction is “to ascertain and give effect to the intention and purpose of the legislature.” *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000). Courts must do so without unduly restricting or expanding a statute beyond its intended scope. *In re C.K.G., C.A.G., & C.L.C.*, 173 S.W.3d 714, 721-22 (Tenn. 2005). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. We must examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *Cohen v. Cohen*, 937 S.W.2d 823, 828 (Tenn. 1996); *T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC*, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read “without any forced or subtle construction which would extend or limit its meaning.” *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes relating to the same subject matter or having a common purpose are to be construed together. *In re C.K.G., C.A.G., & C.L.C.*, 173 S.W.3d at 722.

As our Supreme Court has said, “[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning.” *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001), citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995). Courts must look to a statute’s language, subject matter, objective or purpose, and the wrong it seeks to remedy or prevent. *In re C.K.G., C.A.G., & C.L.C.*, 173 S.W.3d at 722. Courts are also instructed to “give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent.” *Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn. 1975); *In re Estate of Dobbins*, 987 S.W.2d 30, 34 (Tenn. Ct. App. 1998). Courts must presume that the General Assembly selected these words deliberately, *Tenn. Manufactured Housing Ass’n. v. Metropolitan Gov’t.*, 798 S.W.2d 254, 257 (Tenn. App. 1990), and that the use of these words conveys some intent and carries meaning and purpose. *State v. Levandowski*, 955 S.W.2d 603, 606 (Tenn. 1997); *Tennessee Growers, Inc. v. King*, 682 S.W.2d 203, 205 (Tenn. 1984).

Mabalot, 2005 WL 3416293, at *6.

In *State v. Beauregard*, 32 S.W.3d 681 (Tenn. 2000), our Supreme Court discussed the different objectives of the rape and incest statutes as follows:

[T]he statutes prohibiting incest and criminal sexual penetration achieve different policy objectives. The sanction against criminal

sexual penetration is to prevent forcible, nonconsensual sexual activity and to protect a person's important interest in uncoerced choice of sexual partners. The incest statute, on the other hand, is more narrowly directed toward prohibiting sexual relations, whether consensual or not, between relatives....

Id. at 684 (quoting *Swafford v. State*, 112 N.M. 3, 810 P.2d 1223, 1235 (1991)).

J.R. relies upon Tenn. Code Ann. § 36-1-121(a) in support of his argument that the victim is no longer his sister. This statute provides as follows:

36-1-121. Effect of adoption on relationship. – (a) The signing of a final order of adoption terminates any existing guardianship orders and establishes from that date the relationship of parent and child between the adoptive parent(s) and the adopted child as if the adopted child had been born to the adoptive parent(s) and the adopted child shall be deemed the lawful child of such parent(s), the same as if the child had been born to the parent(s), for all legal consequences and incidents of the biological relation of parents and children.

While Tenn. Code Ann. § 36-1-121 certainly affects various legal aspects of a child's relationship with his or her adoptive parents, the statute cannot eliminate the actual biological relationship between a brother and sister. In light of our goal when interpreting statutes, coupled with the clear legislative intent of the incest statute, we readily conclude that the termination of the parental rights of the parents of J.R. and the victim and the later adoption of the victim have no bearing on whether J.R. committed incest. This is the only reasonable construction to be given Tenn. Code Ann. § 39-15-302 if the intent of that statute is to be given effect. J.R. and the victim either were or were not "brother and sister of the whole or half-blood" They clearly biologically were such siblings, and their biological status as blood relatives is not changed in the slightest by the termination of their parents' parental rights or the adoption of the victim by M.R. While the courts of this state certainly have the power, under the appropriate circumstances, to terminate the legal relationship between a parent and child as well as to allow the adoption of a child, no court has the power to change the actual biological relationship between a brother and a sister. The clear intent of our General Assembly in enacting the incest statute was to prohibit sexual relationships between certain relatives whether the relationship is one determined by a legal definition or by the actual biological relationship. J.R. and the victim are still biologically brother and sister "of the whole or half blood...." The judgment of the Trial Court is, therefore, affirmed.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. Costs on appeal are taxed to the Appellant, J.R., and his surety, if any.

D. MICHAEL SWINEY, JUDGE